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STATE OF MICHIGAN
IN THE SUPREME COURT

(Appeal from the Court of Appeals, Holbrook, Jr., P.J., and McDonald and Saad, JJ)

PITTSFIELD CHARTER TOWNSHIP,
Plaintiff/Appellee,

Supreme Court No. 119590

Court of Appeals No. 219480

v

WASHTENAW COUNTY,
Defendant/Appellant,

Washtenaw Co. Circuit Court
File No. 98-9690-CE

and

CITY OF ANN ARBOR,
Defendant.

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BRIEF OF AMICUS CURIAE MICHIGAN TOWNSHIPS ASSOCIATION

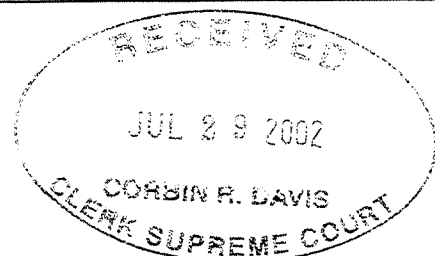


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STATEMENT OF THE QUESTION PRESENTED

- I. Is a county in locating, constructing and operating a homeless shelter under the general authority of county boards of commissioners found at MCL 46.11 required to comply with reasonable township zoning ordinance provisions?

The Washtenaw County Circuit Court answered: "No".

The Michigan Court of Appeals answered: "Yes".

Plaintiff/Appellee Pittsfield Charter Township answers: "Yes".

Defendant/Appellant Washtenaw County answers: "No".

Amicus Curiae Michigan Townships Association answers: "Yes".

STATEMENT OF JURISDICTION OF SUPREME COURT

Jurisdiction for the present action is found in MCR 7.301(2) allowing review by appeal of the Court of Appeals decision in this matter filed June 15, 2001. Leave to appeal was granted April 30, 2002, and this Amicus Curiae Brief is submitted to this Court pursuant to MCR 7.306(C)

STATEMENT OF THE STANDARD OF REVIEW

The question of statutory interpretation involved in this case is reviewed de novo as a question of law. Capital Region Airport Authority v Charter Township of DeWitt, 236 Mich App 576; 601 NW2d 141 (1999).

STATEMENT OF FACTS

Amicus Curiae, Michigan Townships Association, hereby adopts the Statement of Facts contained in Pittsfield Charter Township's Brief filed with the Michigan Supreme Court in the within cause.

INTRODUCTION

The Michigan Court of Appeals published decision in Pittsfield Charter Township v Washtenaw County, 246 Mich App 356; 633 NW2d 10 (2001) ("Court of Appeals decision") is the subject of this Honorable Court's review by appeal. In the Court of Appeals decision, the issue analyzed was whether the County's general authority to site and use property for county purposes under MCL 46.11 evidences a clear legislative intent to allow the County to site and use a homeless shelter in derogation of township zoning. In response to this issue, the Court of Appeals decision correctly indicated that:

"Here, we do not read the statute the county relies on as granting exclusive authority to the county to use its property in derogation of all laws, including zoning laws. Rather, we read this statute as our courts in *Burt Township*, *Cody Park* and *CRAA* read the relevant statutes there, as *not* granting plenary power to the affected governmental unit." Pittsfield Township, *supra*, at 366.

The Court of Appeals decision further indicated that:

"We agree with the reasoning of Pittsfield Township and the amicus curiae, Michigan Townships Association, that the zoning and land use statutes express no clear legislative intent to exempt the county from the township's zoning regulations for purposes of selecting a site for its homeless shelter. Moreover, the statutes cited by the county do not indicate that the Legislature intended counties to preempt the field of land and building use regulation. The broad, but nonexclusive powers conferred to the county boards by the enabling statute cannot override the comprehensive statutory scheme that incorporates both the county and township's authority in regulating land use within their borders. Thus, reading the statutes in harmony, the county is not exempt from the township's zoning regulations." Pittsfield Township, *supra*, at 369.

The issue of the authority of Michigan Townships under the Township Zoning Act, MCL 125.271 et seq. (hereinafter "Township Zoning Act"), and the Township Planning Act, MCL 125.321 et seq., (hereinafter "Township Planning Act") to control the location of

county buildings and uses within township boundaries for the protection of the health, safety and welfare of its citizens and planned development within its boundaries is of major importance to township government and its citizens. To permit county government under the general authority of county boards of commissioners found at MCL 46.11 to preempt the more specific provisions of the Township Zoning Act and Township Planning Act would materially thwart the ability of township government to plan and zone for its logical and cohesive development. County boards of commissioners are granted no exclusive authority in this connection and to the contrary are subordinate in zoning authority to a township that has adopted its own zoning ordinance under MCL 125.239. The Court of Appeals decision confirms what has long been the legal position of the Amicus Curiae Michigan Townships Association and townships throughout the State.

Many counties have accepted and acknowledged the preeminence of township zoning over county structures, buildings and uses and have complied with such reasonable zoning provisions. For example, Kalamazoo County operates its fairgrounds in the Charter Township of Kalamazoo pursuant to a zoning special use permit. Every year the County of Kalamazoo appears before the Charter Township of Kalamazoo Planning Commission at a special use public hearing to request authorization for the events to be held at the fairgrounds for the upcoming year. Under the Township's special use permit procedures, in compliance with the Township Zoning Act, due process is accorded both the public and the County. At the public hearing, neighboring property owners have an opportunity to address any concerns regarding the use of the fairgrounds for the upcoming year and the Township has often placed reasonable conditions on the events (i.e., hours of operation, restrictions aimed at reducing noise, etc.), to help ameliorate the impact of the use upon

the surrounding properties. The Township and the County have cooperated together over the years due to the County's compliance with the Township's Zoning Ordinance and this has been beneficial to their governmental relationship and the surrounding community.

Another example of county compliance with township zoning regulation involves Kalamazoo County and Cooper Township. In Cooper Township, the County of Kalamazoo has a park (Markin Glen Park) which operates subject to the Township's Zoning Ordinance. Recently the Township and the County worked together to successfully develop amendments to the Township's Zoning Ordinance to appropriately regulate intended overnight camping at such park. Rather than being a detriment, as some might have this Honorable Court believe, the zoning ordinance amendment process as provided for under the Township Zoning Act was a positive experience allowing participation by the neighboring property owners, the County and the Township to create appropriate provisions regulating the County's use.

Another positive example is occurring presently in Kalamazoo County regarding the location of a new County unified court and jail facility to be located in the City of Kalamazoo. Through intergovernmental cooperation, the County has found an appropriate site to locate this unified facility. If the County were immune to local zoning, this might not be the case.

Amicus Curiae Michigan Townships Association's law firm, due to its location in Kalamazoo, has personal knowledge of Kalamazoo County's acknowledged preeminence of local zoning and this compliance with local zoning in no way impedes the County's ability to operate as a separate governmental entity. We are not personally aware of the facts cited in the Brief of Amicus Curiae Michigan Association of Counties regarding Leelenau

County and Wexford County, however, there are normally two sides to every dispute and while intergovernmental cooperation is one option to find an appropriately zoned location, the counties always have the bundle of rights of a property owner aggrieved by local zoning. As discussed in the following Argument, this bundle of rights is substantial and should not be sold short. It is also interesting to note that Leelenau County acknowledged preeminence of the Leeland Township Zoning Ordinance prior to the Court of Appeals decision by applying in 1996 for a township special use permit and then requesting rezoning.

To reverse the Court of Appeals decision in the within cause would overturn accepted county-township's legal relationships and seriously adversely impact reasonable planned township development and maintenance of property values. The following Argument supports our request that the Court of Appeals decision be affirmed; thereby affirming that the general authority of county boards of commissioners to site and use property for county purposes under MCL 46.11 does not evidence clear legislative intent to exempt such uses from township zoning.

ARGUMENT

I. A COUNTY IN LOCATING, CONSTRUCTING AND OPERATING A HOMELESS SHELTER UNDER THE GENERAL AUTHORITY OF COUNTY BOARDS OF COMMISSIONERS FOUND AT MCL 46.11 MUST COMPLY WITH A TOWNSHIP'S REASONABLE ZONING ORDINANCE PROVISIONS.

A. THE APPROPRIATE TEST FOR ANALYSIS OF A COUNTY'S CLAIMED EXEMPTION FROM COMPLIANCE WITH A TOWNSHIP'S ZONING ORDINANCE IS THE DISCERNMENT OF LEGISLATIVE INTENT FROM EXAMINATION OF THE RELEVANT STATUTORY PROVISIONS.

The appropriate legal test to be applied in determining whether a county's homeless shelter is exempt from compliance with a township's zoning ordinance is set forth in the landmark decision by the Michigan Supreme Court in Deardon v City of Detroit, 403 Mich 257; 269 NW2d 139 (1978) and as upheld and clarified by the Michigan Supreme Court in Burt Township v DNR, 459 Mich 659; 593 NW2d 534 (1999).

In Burt Township, *supra*, at 663, the Supreme Court held:

"We agree with the parties and the Court of Appeals that the present dispute is governed by the Court's decision in Deardon v Detroit, 403 Mich 257, 264; 269 NW2d 139 (1978), in which we held that 'the legislative intent, where it can be discerned, is the test for determining whether a governmental unit is immune from the provisions of local zoning ordinances.'"

The Deardon test was further clarified in Burt Township, *supra* at 669, when the Supreme Court indicated that:

"... we decline to require that the Legislature use any particular talismanic words to indicate its intent. The Legislature need only use terms that convey its clear intention that the grant of jurisdiction given is, in fact, exclusive. Whatever terms are actually employed by the Legislature, our task is to examine the various statutory provisions at issue and attempt to discern the legislative intent in enacting them."

In applying the test from Deardon and Burt Township, to the case at bar, we submit that it is the charge of this Honorable Court to examine the relevant statutory provisions supporting the parties positions and to discern whether the State Legislature clearly intended to exempt a county's homeless shelter from compliance with a township's reasonable zoning ordinance.

B. A TOWNSHIP, PURSUANT TO ITS ZONING AND PLANNING ENABLING LEGISLATION, HAS THE AUTHORITY TO REGULATE A COUNTY HOMELESS SHELTER.

In following the order of analysis performed in Burt Township, it is appropriate to first identify and then address the pertinent legislative provisions regarding a township's authority to regulate a county homeless shelter under its zoning and planning enabling legislation. The Township Zoning Act provides the basic enabling legislation for a township's zoning authority. Section 1 of the Township Zoning Act, MCL 125.271, provides in pertinent part:

"The township board of an organized township in this state may provide by zoning ordinance for the regulation of land development and the establishment of districts in the portions of the township outside the limits of cities and villages which regulate the use of land and structures; to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service and other uses of land; to ensure that the use of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements; and to promote public health, safety, and welfare. For these purposes, the township board may divide the township into districts of such number, shape and area as it considers best suited to carry out this act . . . Ordinances regulating land development may also be adopted designating or limiting the location, . . . of dwellings, buildings, and structures that may be erected or altered, . . . and

the specific uses for which dwellings, buildings, and structures, . . . may be erected or altered . . . the sanitary, safety and protective measures that shall be required for the dwellings, buildings, and structures, . . . and the maximum number of families which may be housed in buildings, dwellings and structures, . . . erected or altered.” (Emphasis added).

Section 3 of the Township Zoning Act, MCL 125.273, provides in pertinent part:

“The zoning ordinance shall be based upon a plan design to promote the public health, safety and general welfare; to encourage the use of lands in accordance with their character and adaptability, and to limit the improper use of land; . . . to meet the needs of the state’s residents for . . . places of residence, . . . industry, trade, service, and other uses of land; to ensure that uses of the land shall be situated in appropriate locations and relationships; to avoid the overcrowding of population; . . . to reduce hazards to life and property; to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements; and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and properties. The zoning ordinance shall be made with reasonable consideration, among other things to the character of each district; its peculiar suitability for particular uses; the conservation of property values and natural resources; and the general and appropriate trend in character of land, building, and population development.” (Emphasis added).

Section 28 of the Township Zoning Act, MCL 125.298 provides:

“Insofar as the provisions of any ordinance lawfully adopted under the provisions of this act are inconsistent with the provisions of ordinances adopted under any other law, the provisions of ordinances adopted under the provisions of this act, unless otherwise provided in this act, shall be controlling.”

In addition to the above cited provisions of the Township Zoning Act, the Township Planning Act, provides enabling legislation for a township to engage in certain planning functions and provides further support for a finding that a township has authority to regulate a county homeless shelter. It should be noted that since the Court of Appeals decision, numerous amendments were made to the Township Planning Act pursuant to PA 2001,

No. 263. We shall address the Township Planning Act as it existed at the time of this case and refer this Honorable Court's attention to the subsequent amendments when pertinent.

Section 6 of the Township Planning Act provided in pertinent part:

"(1) The planning commission shall make and adopt a basic plan as a guide for the development of unincorporated portions of the township . . .

* * *

(2) The planning commission shall consult, in respect to its planning, with representatives of adjacent townships; with the county planning commission, if any; with any representatives of incorporated municipalities within the township; and with the regional planning commission, if any . . ." (Emphasis added).

Section 7 of the Township Planning Act provided in pertinent part:

"(2) The basic plan shall include those of the following subjects which reasonably can be considered as pertinent to the future development of the township:

(a) a land use plan and program, in part consisting of a classification and allocation of land for agriculture, residents, commerce, industry, recreation, ways and grounds, public buildings, schools, soil conservation, forests, wildlife refuges and other uses and purposes." (Emphasis added).

From a review of the language contained in the foregoing zoning and planning enabling statutes, it is evident that the State Legislature has given townships comprehensive regulatory authority over land use and development. The application of these zoning and planning enabling statutes clearly authorize the Township to plan for and regulate the use of land for a homeless shelter, as a residence or public facility, without distinction as to whether the homeless shelter is operated by a private entity or a governmental entity.

In particular, the State Legislature pursuant to the above quoted Section 1 of the Township Zoning Act, MCL 125.271, has granted a township significant authority to adopt a zoning ordinance regulating development and use of land and structures to meet the needs of the State's citizens for places of residence; to facilitate adequate and efficient provision for public service and facility requirements; and to promote public health, safety and welfare. Clearly, this language would allow a township to address the location and use of a homeless shelter, publicly or privately operated. Furthermore, this is supported by Section 3 of the Township Zoning Act, MCL 125.273, which requires the zoning ordinance to be based upon a plan to, among other things:

“ . . . promote the public health, safety and general welfare; to encourage the use of lands in accordance with their character and adaptability, and to limit the improper use of land; . . . to meet the needs of the state's residents for . . . places of residence . . . and other uses of land; to ensure that uses of land shall be situated in appropriate locations and relationships . . . to facilitate adequate provision for . . . other public requirements; and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and properties . . . ”

From the authority granted by these two sections of the Township Zoning Act, it is well within a township's zoning authority, pursuant to a zoning ordinance, to divide the uses of land within the township into different districts based upon reasonable distinctions and in doing so determine that a homeless shelter, as a place of residence or public facility, would not be a permitted use in a limited industrial district. Common sense would dictate that a homeless shelter does not involve an industrial use, even to a limited extent, and that it would not be appropriate to allow such a use in the limited industrial district. In the case at bar, the County does not question the reasonableness of prohibiting a homeless shelter from locating in the limited industrial district but rather claims that their proposed homeless

shelter can be placed in the limited industrial district anyway because they are exempt from township zoning regulation in regards to such use. There is, however, no exception, implicit or explicit, exempting a county homeless shelter from township zoning regulations under the Township Zoning Act.

In addition to the broad regulatory authority granted under the Township Zoning Act, the Township Planning Act is relevant to a township's regulation of a county homeless shelter. Where a township engages in planning under the Township Planning Act, the township planning commission is required to make and adopt a basic plan which serves as a guide for the township zoning ordinance. Township Planning Act, MCL 125.326. The basic plan must include a land use plan and program providing the classification and allocation of land for broad categories of use including residents and public buildings. Township Planning Act, MCL 125.327. Pursuant to these statutory requirements contained in the Township Planning Act, the allocation of land for public buildings and residences, which includes a county homeless shelter, should be planned for under a township's basic plan and subsequently provided for under a township's zoning ordinance.

In the case at bar, both the Circuit Court and County expressed concern that allowing the Township land use authority over the appropriate districts in which the proposed homeless shelter could be placed would thwart the ability of the County to select suitable sites of its choice. It appears, however, that the State Legislature actually intended a township zoning ordinance in its designation of permitted land uses within a township, to control over a county's ability to exercise land use regulatory authority pursuant to the County Zoning Act, MCL 125.201, et seq. Section 39 of the County Zoning Act, MCL 125.239, specifically provides that the land within a township, which is

subject to a township zoning ordinance, is not subject to a county zoning ordinance, rule or regulation adopted pursuant to the County Zoning Act. This principle is further supported by Section 28 of the Township Zoning Act, MCL 125.298, which provides that a township zoning ordinance controls over inconsistent provisions of ordinances adopted under any other law.

This is not to say that a county is subject to the mere whim of a township in regards to provisions of a township zoning ordinance as it is axiomatic that the zoning ordinance must be reasonable and non-exclusionary. A county has the same bundle of constitutional and statutory protections as any other property owner under a township zoning ordinance. These protections are substantial and should not be lightly disregarded. Section 27a of the Township Zoning Act, being MCL 125.297a, provides protection to a county against a township improperly excluding a necessary county land use by providing that:

“A zoning ordinance or zoning decision shall not have the affect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful”.

Additionally, under the Township Zoning Act, a county would have the ability to pursue rezoning of its property to allow a proposed use not presently permitted and would have due process and legal recourse therein. If a township were unreasonably blocking a proposed county use, a court could properly allow such use and assure the appropriateness of the location of such use. The Township Zoning Act also provides for a township zoning board of appeals from which a county could request a variance from the township zoning ordinance or seek appeal from an administrative zoning decision. See

MCL 125.290. The county if aggrieved by a decision of the township zoning board of appeals would have recourse to appeal the decision to Circuit Court. MCL 125.293a.

In addition to the bundle of rights that a county would have as a property owner under a township zoning ordinance, a county also has statutory authority to actively participate in the township's zoning and planning functions and can thereby shepard the basic plan and zoning ordinance to assure that there are adequate areas available for their public building uses such as a homeless shelter. As provided in Section 10 of the Township Zoning Act, MCL 125.280, the township zoning board shall submit a proposed zoning ordinance and zoning map to a county zoning commission, county planning commission or zoning committee of the county, as the case may be, for review and recommendation. Also, Section 8 of the Township Planning Act, MCL 125.328, requires that after adoptive action by a township planning commission regarding the basic plan, the plan must be referred to an existing county planning commission for its approval. Additionally, Section 6 of the Township Planning Act, MCL 125.326, requires that a township planning commission consult, in respect to the planning, with the county planning commission.

As previously noted, the Township Planning Act was amended following the Court of Appeals decision by PA 2001, No. 263. The Township Planning Act, MCL 125.327a, as amended, provides in Section 7a, that before preparing a plan, the township planning commission must mail a notice explaining that the planning commission intends to prepare a plan and requesting cooperation and comment from the county planning commission or, if there is no county planning commission, the county board of commissioners. The amendments further provide in Section 7b of the Township Planning Act, MCL 125.327b,

that after preparing a proposed plan and approval of its distribution by the township board, the proposed plan is sent to the county planning commission or, if there is no county planning commission, the county board of commissioners, for review and comment. Of particular note, PA 2001, No. 263, removed the old provision from MCL 125.328 referenced above, requiring county planning commission approval of the township basic plan and instead only presently allows the county to review and comment on the plan under MCL 125.327b. We submit that the State Legislature knew of the published Court of Appeals decision and, therefore, must have believed that the new provisions regarding the county's review and recommendation of the township's basic plan were sufficient to protect the county's interest in light of having to comply with township zoning and better reflected their intent

The State Legislature, in creating the above referenced zoning and planning enabling legislation has created a comprehensive regulatory scheme under which a township has authority by way of its zoning ordinance to regulate a county homeless shelter's use of land and that within this regulatory scheme, the county is provided with an opportunity to participate in the development of the township's zoning ordinance and basic plan.

C. THERE IS NO CLEAR LEGISLATIVE INTENT UNDER MCL 46.11 TO EXEMPT A COUNTY HOMELESS SHELTER FROM COMPLIANCE WITH A TOWNSHIP'S ZONING ORDINANCE.

As expressed in the prior argument, the Township Zoning Act, and the Township Planning Act create a comprehensive regulatory scheme providing a township with extensive authority to regulate the use and development of land including a county

homeless shelter. We submit that the County must establish a clear legislative intent from the relevant language of MCL 46.11 (i.e., statute under which County claims exemption) to exempt a county homeless shelter from a township's zoning ordinance and that such clear legislative intent does not exist.

As authority for the County's contention that their proposed homeless shelter is exempt from a township zoning, they cite the general powers conferred upon a county board of commissioners as contained in MCL 46.11. This statute sets forth a number of broad powers of a county board, of which the following, they claim pertinent:

MCL 46.11(a); MSA 5.33(a) providing that a county board may:

"Purchase or lease, for a term not to exceed 20 years, real estate necessary for the site of a court house, jail, clerk's office, or other county building in that county"

and MCL 46.11(b); MSA 5.331(b) under which a county board may:

"Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat."

and MCL 46.11(d); MSA 5.331(d) under which a county board may:

"Erect the necessary buildings for jails, clerk's offices and other county buildings and prescribe the time and manner of erecting them."

The statutory authority cited by the County fails to rise to the requisite level to establish a clear legislative intent to exempt a county homeless shelter from the comprehensive regulatory scheme set out in the Township Zoning Act and Township Planning Act. In Burt Township, supra, Addison Township v Department of State Police, 220 Mich App 550; 560 NW2d 67 (1996); Cody Park Association v Royal Oak School District, 116 Mich App 103; 321 NW2d 855 (1982); and Capital Region Airport Authority

v Charter Township of DeWitt, 236 Mich App 576; 601 NW2d 141 (1999), the courts upheld the applicability of local zoning over the claimed exempt uses asserted by the governmental units involved. See also Attorney General Opinion No. 6982 of 1998, which held a county building authority subject to local zoning. In these cases, the legislative intent to exempt the claimed uses from local zoning was not found in the general language being asserted in support of the exemption. Similarly, in the case at bar, the County would ask the Court to interpret legislative intent to exempt their homeless shelter on the basis of general grants of authority which basically authorize a county board to determine the site for county buildings, to purchase or lease the land and to erect county buildings.

In Burt Township, supra, at 669-670, the court indicated that:

“The DNR places great emphasis on the mandatory nature of the duties expressed in the NREPA, as evidenced by the Legislature’s repeated use of the term ‘shall’, as well as the fact that the DNR has given the ‘power and jurisdiction’ to manage and control lands under the public domain¹¹. However, we are not persuaded that the Legislature, in directing that the DNR engage in certain governmental functions, intended that the DNR be authorized to do so in any manner it chooses. Accordingly, the DNR ‘power and jurisdiction’ to manage land within its control is not the same as granting it exclusive jurisdiction. Thus the fact that the DNR is mandated to create recreational facilities on public land it manages and controls does not indicate a legislative intent that the DNR may do so in contravention of local zoning ordinances.”

Similarly, in Capital Region Airport Authority, supra, at 592-593, the court in analyzing whether the proposed development of airport lands for non-aeronautical uses was exempt from local zoning regulation, concluded that:

“We find that neither of these provisions expresses a legislative intent that the CRAA have exclusive authority over the acquisition, development, sale, or lease of airport land in conjunction with non-aeronautical uses. Section 101 speaks only of land related to aeronautical functions. Although § 105 authorizes the CRAA to lease airport property for non-aeronautical purposes, we find no statutory language evincing a legislative intent for the CRAA to

have exclusive jurisdiction over these leases and developments. § 105 merely authorizes a CRAA to engage in this activity, which is not sufficient to immunize the CRAA from local regulation.” Burt Township, supra, 459 Mich 670. In Burt Township, the Supreme Court was not persuaded that the Legislature, in directing that the DNR engage in certain governmental functions, intended that the DNR be authorized to do so in any manner it chooses”. *Id.*, 669-670. Analogously, we are not persuaded that the Legislature intended for the CRAA to have authority to lease airport land in contravention of local zoning. Accordingly, we find no legislative intent to exempt the CRAA from local land use ordinances with respect to lease or development of land for non-aeronautical functions.”

Similarly, in Cody Park, supra, at 108, the court stated that:

“The mere fact that the Legislature has specified the designated decision-making authority for such purposes can not be extended to support an interpretation that such authority is exclusive and thus not subject to local zoning ordinances.”

In Cody Park, supra, the local school district claimed an exemption from local zoning relying on a general grant of authority located in Section 250 of the School Code, MCL 380.250, which provided the School Board the authority to locate, acquire, purchase, or lease in the name of the school district, sites for certain general uses such as schools, libraries and administration buildings.

In Addison Township, supra, the court was impressed with the plenary authority granted townships in the Township Zoning Act and the lack of any language of preemption or immunity of the State Police. Even though the Michigan State Police Act as quoted at 557, stated, “the director shall fix the location of the various units of the department . . . ” and the Management and Budget Act quoted at 558, stated said department “shall establish, manage and operate, through either state ownership or commercial leasing, telecommunications systems and service for the operations of state government”, such

language did not indicate any intent to exempt these agencies from local zoning ordinances when placing communication towers.

The County's claim that the general decision making authority under MCL 46.11(a), (b) and (d) provides a clear intent by the Legislature to exempt their proposed homeless shelter from township zoning is not supported by the above cited case law. In fact, MCL 46.11 was amended by PA 97 of 1998, amending, among other things both (b) and (d) and the County has attached to its Brief on Appeal the House Legislative Analysis which in no way indicates that these subsections were amended with an intent to exempt such uses from local zoning. We submit that if exemption from local zoning was an intent of the language used when MCL 46.11(b) and (d) were amended, there would have been great and obvious discussion of the matter before the State Legislature regarding amendment.

Assuming that homeless shelters are permitted to be located and erected by a county board under the general provisions of MCL 46.11(a), (b) and (d), statutes whenever possible, should be interpreted in a manner which gives meaning to both. Rasmussen v Pennfield Township, 104 Mich App 361 at 366-367; 304 NW2d 581 (1981). Undeniably, a county's authority under MCL 46.11 (a), (b) and (d) can be construed in harmony with township zoning and planning enabling legislation. A county is not estopped by township zoning to exercise its authority to locate and construct and use a homeless shelter; merely such authority must be exercised within the township's zoning framework. As indicated previously, a county need not fear the imposition of local zoning on the siting of a homeless shelter. A township's basic plan is required to take into consideration appropriate locations for public buildings (Section 7 of the Township Planning Act, MCL 125.327) and as an active participant in the planning and zoning process (Section 10 of the Township Zoning

Act, MCL 125.280 and Sections 6 and 8 of the Township Planning Act, MCL 125.326, 328), a county can seek to assure that there are sufficient areas available for their needed public uses. Contrarily, the Township zoning and planning enabling legislation sets forth a comprehensive regulatory scheme under which the proper uses of land are designated and regulated; and if a county were held to be exempt from township zoning for the location of any county building, including a homeless shelter, then this comprehensive regulatory scheme would be thwarted by the plethora of potential county uses which could be sited in any and all areas from residential zones to industrial zones within the township. It certainly could not be the intent of the Legislature to subvert local zoning principles with such a broad based exemption and such a broad based exemption would not create harmony between the statutes.

The following quote from Capital Region Airport Authority, supra, strengthens the contention that there is no legislative intent to exempt a county's homeless shelter from the provisions of a township's zoning ordinance.

In Capital Region Airport Authority, supra, at 594, the court indicated that:

"Moreover, like the Burt Township Court, we found it noteworthy that while the TZA is silent with respect to airports, it nonetheless contained specific exemptions for uses such as oil and gas wells and licensed residential facilities. Burt Township, supra, 459 Mich 670; MCL 125.271(1) and 125.286(a); MSA 5.2963(1) and 5.2963(16a). Under the maxim, 'expressio unius est exclusio alterus' (The expression of one thing is the exclusion of another). This Court has stated that the express mention of one thing in a statute implies exclusion of other similar things. United States Fidelity v Amerisure Ins Co, 195 Mich App 1, 6; 489 NW2d 115 (1995). Thus by making express exemptions in the TZA for wells and residential facilities the Legislature precluded findings of implicit exemptions for other land uses. In the words of the Burt Township court, the Legislature has demonstrated that it was aware of overriding land-use issues that warranted specific exemption from local regulation but provided no such exemption for the DNR's activities. This fact provides additional assurance that there was no legislative intent

to exempt the DNR here. Burt Township, supra, 459 Mich 670-671. Likewise, we find no legislative intent to exempt airports in the Township Zoning Act."

Similarly, there is no legislative intent to exempt homeless shelters in the Township Zoning Act. The proposed homeless shelter is similar in nature to the expressly exempted residential facilities (see MCL 125.286g) and the fact that the Legislature has chosen not to include an exemption for a homeless shelter provides further evidence that there is no clear legislative intent to exempt homeless shelters from a township's zoning ordinance.

The case of Addison Township, supra, together with the resulting legislation, exemplify this interpretation of legislative intent with respect to zoning authority. The Court of Appeals held that the statute pertaining to State Police Communication Towers did not grant immunity or exemption from the township's authority under the Township Zoning Act. When this was recognized by the State Legislature, it quickly amended the pertinent statute found at MCL 28.282(2) by PA 1996, No. 538, adding that after the Director of the Department of State Police has selected a particular tower site, the following:

"If the selected site does not comply with zoning, the local unit shall have 30 days from the date of notification to grant a special use permit or propose an equivalent site. If the local unit does not grant a special use permit within the 30 day period, or a proposed alternate site does not meet the siting requirements, the Department may proceed with construction."

While the State Legislature acted to exempt the communication towers from local zoning ordinances or use permits issued under those ordinances, except as specifically provided in MCL 28.282(2), (Byrne v State of Michigan, 463 Mich 652 at 661; 624 NW2d 906 (2001)) the State Legislature did continue a measure of local control under the subsequent legislation (i.e., right to propose an alternate site). If this Honorable Court were to reverse the Court of Appeals decision then judicially, rather than legislatively, county

buildings and land uses would be given free reign with no measure of local control to temper this authority.

It is interesting to note that the State Legislature has had ample time and opportunity to legislatively address the published Court of Appeals decision as was done with Addison Township, supra. The State Legislature clearly knows how to address exemptions from zoning when such matters are brought to their attention. In the case at bar, the State Legislature's inaction to legislatively address a county's exemption from township zoning provides tacit approval of the Court of Appeals determination of their intent in the matter. This is true, especially in light of the fact that since the date of the published Court of Appeals decision, amendments were made to both the Township Zoning Act, PA 2001, No. 177, and substantial amendments were made to the Township Planning Act, PA 2001, No. 263, all, however, being deficient of any reference which would subsequently immunize county buildings and uses from the township planning and zoning process. The County is asking this Honorable Court for something the State Legislature will not give them, township zoning immunity.

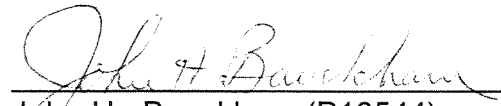
RELIEF REQUESTED

On the basis of the foregoing, Amicus Curiae Michigan Townships Association respectfully request that the Court of Appeals decision be affirmed.

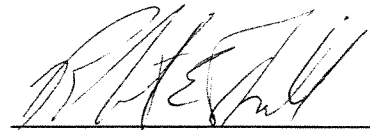
Respectfully submitted.

**BAUCKHAM, SPARKS, ROLFE,
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Dated: 7-29-02


John H. Bauckham (P10544)

Dated: 7-29-02


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